IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Bail Appl..No. 4033 of 2007()

CRIME NO.37/07 OF DEVIKULAM FOREST RANGE OFFICE

PETITIONERS/ACCUSED NOS 1 AND 2

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1. VISWANATHAN, S/O.GURUDAS, 2ND LANE - SECOND DIVISION - SILENT VALLEY, K.O.H.VILLAGE, MUNNAR.

2. RAVIDAS, S/O.SELVARAJ, NO.586/VIII, KAPPIKKADA LANE, SILENT VALLEY SECOND DIVISION, K.O.H.VILLAGE, MUNNAR.

BY ADV. SRI.SOORAJ T.ELENJICKAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH FOREST RANGE OFFICER, DEVIKULAM, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4033 OF 2007

Dated this the 11th day of July, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 and 2 and they face allegations under the Wild Life Protection Act. The crux of the allegations against the petitioners is that on the night of 31/5/ – 1/6/07 they indulged in hunting with their dog and killed a sambar deer – an animal of the protected species. The animal was allegedly beaten to death. The meat was shared with the 3rd accused. The 3rd accused has been arrested. His statement has been recorded. The complicity of accused 1 and 2 has thus become evident for the Investigator. Investigation is in progress. The petitioners (accused 1 and 2) apprehends imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The alleged indication of complicity is on the basis of an incompetent statement

recorded by an officer who is not authorised to record such statement under the provisions of the Wild Life Protection Act, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The allegations are serious. The weapons used to do away with the animal have got to be recovered. Custodial interrogation of the petitioners is absolutely necessary. This is not, at any rate, a fit case where the discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioners. The petitioners may be directed to follow the ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. This petition may, in these circumstances, be dismissed, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. The crucial question is not whether the alleged statement will be admissible in evidence when the trial starts. In the course of investigation, information has been gathered by the Investigators that the petitioners are responsible for the hunting of the animal of the protected species. I find no reason whatsoever to permit the petitioners to arm themselves with an order of anticipatory bail at this early state. This, I concur with

the learned Public Prosecutor, is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. They must then seek regular bail.

5. In the result, this petition is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge